A **MAJLIS PERBANDARAN PULAU PINANG**

v.

SYED AHMED MM GOUSE MOHAMED

B COURT OF APPEAL, PUTRAJAYA
GOPAL SRI RAM JCA
AHMAD FAIRUZ JCA
DENIS ONG JCA
[CIVIL APPEAL NO: P-02-695-1997]
C 23 JANUARY 2006

LOCAL GOVERNMENT: *Buildings - Demolition - Compensation - Appeal by local authority against compensation ordered by High Court - House demolished owned by respondent erected on land belonging to* D *another - Whether respondent had a licence coupled with equity - Whether equity satisfied by compensation - Whether respondent denied right to be heard - Whether art. 13(1) Federal Constitution violated - Whether respondent rightly compensated*

E The respondent owned a portion of a plank house constructed on a piece of land owned by the Majlis Agama Islam Pulau Pinang ('Majlis'). The appellant who was the local authority demolished the house pursuant to the powers conferred on it under the Street, Drainage and Building Act 1974. The respondent brought F an action against the Majlis and the appellant in the High Court and was awarded RM26,000 compensation for the loss of his house. The appellant now appealed against the compensation awarded to the respondent.

Held (dismissing the appeal)
G **Per Gopal Sri Ram JCA delivering the judgment of the court:**

(1) In a situation where the land belongs to one person and the building belongs to another, the law places this type of H relationship in the category of a licence coupled with equity. The landowner may give notice to terminate the tenancy of the land but he cannot evict the tenant without satisfying the latter's equity. This is usually achieved by the payment of reasonable compensation. In the present case, the respondent I was not heard on the matter before his house was demolished. It is a settled principle of public law that a person must be

heard before he or she is deprived of his or her property (See *Cooper v. The Wandsworth Board of Works*). Since the respondent was deprived of his house in breach of the rule in *Cooper*'s case, the respondent was plainly entitled to be compensated for the loss of his house. Further, there was a clear violation of art. 13(1) of the Federal Constitution wherein the respondent should have been given an opportunity of being heard. It has been repeatedly held by the courts across the Commonwealth that compensation is payable to a person whose constitutionally guaranteed fundamental right, such as the right to life, personal liberty or property is violated. (paras 3 & 4)

Bahasa Malaysia *translation of headnotes*

Responden memiliki sebahagian dari sebuah rumah papan yang dibina di atas tanah kepunyaan Majlis Agama Islam Pulau Pinang ('Majlis'). Perayu, yang merupakan pihak berkuasa tempatan, telah merobohkan rumah di bawah kuasa-kuasa yang diberikan kepadanya oleh Akta Jalan, Parit dan Bangunan 1974. Responden memulakan guaman terhadap Majlis dan perayu di Mahkamah Tinggi dan telah diberikan award sebanyak RM26,000 sebagai pampasan atas kehilangan rumah. Perayu merayu terhadap pampasan yang diawardkan kepada responden.

Diputuskan (menolak rayuan)
Oleh Gopal Sri Ram HMR menyampaikan penghakiman mahkamah:

(1) Dalam keadaan di mana rumah dipunyai oleh seorang dan tanah dimiliki oleh seorang lain, undang-undang telah meletakkan perhubungan yang seperti ini dalam kategori suatu lesen yan disertai dengan ekuiti. Tuan tanah boleh memberi notis untuk menamatkan tenansi tetapi tidak boleh mengeluarkan tenan tanpa memenuhi ekuiti pihak terkemudian. Ini biasanya dicapai melalui bayaran pampasan yang munasabah. Dalam kes semasa, responden tidak didengar mengenai halperkara sebelum rumahnya diroboh. Menjadi prinsip undang-undang awam kukuh bahawa seseorang hendaklah didengar sebelum haknya ataupun hartanya diambil. (lihat *Cooper v The Wandsworth Board of Works*). Oleh kerana responden telah diambil rumahnya secara yang melanggar kaedah di dalam kes *Cooper*, responden jelas berhak diberi pampasan atas kehilangan rumahnya. Selain itu, terdapat

A pencabulan jelas terhadap per. 13(1) Perlembagaan Persekutuan di mana responden seharusnya diberi peluang untuk didengar. Mahkamah-mahkamah Komanwel telah berulang kali memutuskan bahawa pampasan mesti dibayar kepada seseorang jika haknya yang dijamin oleh perlembagaan, seperti hak
B kepada kehidupan, kebebasan diri atau kepada harta benda, dicabuli.

Case(s) referred to:
Cooper v. The Wandsworth Board of Works [1863] 143 ER 414 ***(foll)***
C *Cullen v. Chief Constable of the Royal Ulster Constabulary (Northern Ireland) [2003] 1 WLR 1763* ***(refd)***
Fose v. Minister of Safety and Security [1996] 2 BCLR 232 ***(refd)***
Khew Ah Bah v. Hong Ah Mye [1971] 2 MLJ 86 ***(refd)***
Maharaj v. Attorney-General of Trinidad & Tobago (No 2) [1979] AC 385 ***(refd)***
D *Nilabati Bahera v. State of Orissa [1993] AIR SC 1960* ***(refd)***
Oag v. The Queen [1985] 22 CRR 171 ***(refd)***
Pembangunan Darjat Sdn Bhd v. Wong Jie Tshung & Ors [2000] 2 MLJ 212 ***(refd)***
Simpson v. Attorney-General [1994] 3 NZLR 667 ***(refd)***

E **Legislation referred to:**
Federal Constitution, art. 13(1)

For the appellant - A Suppiah (Mohamed Aslam Mohamed Mydin with him); M/s Presgrave & Matthews
F *For the respondent - M Thayalan; M/s Thayalan & Assoc*

[Appeal from High Malaya, Pulau Pinang; Civil Suit No: 22-420-89]

Reported by Usha Thiagarajah

G

JUDGMENT

Gopal Sri Ram JCA:

H **[1]** The facts of this case fall within a narrow compass. The appellant is the local authority in and for the island of Pulau Pinang. The respondent was, at all material times the ground tenant of land of which the Majlis Agama Islam, Pulau Pinang ("the Majlis") is the registered proprietor. The Majlis is not a party
I to this appeal. The respondent is the successor in title to a portion of a plank house which had been constructed on the land in question. He had purchased that portion from one Che Yam

binti Yahya. On 1 October 1986, the appellant pursuant to the power conferred on it by the Street, Drainage and Building Act 1974 ("the Act") demolished the house in question. The respondent brought an action against the Majlis and the appellant claiming certain declaratory and ancillary relief. As against the appellant, the declaration sought was to the effect that the demolition was unlawful. The High Court quite correctly refused to grant that remedy. But it awarded compensation of RM26,000. And it is against that order that the present appeal is directed.

[2] The type of ownership claim made by the respondent in the present case is not a stranger to our law. If you look at the early cases of ejectment decided by our courts you will find such examples. Land is owned by X and is rented out to Y with permission to construct a building (usually a house) on it. Occupation is permitted so long as the land rent is paid. So you have a situation where the land belongs to one person and the building belongs to another. The law places this type of relationship in the category of a licence coupled with an equity. The landowner may give notice to terminate the tenancy of the land. But he cannot evict the tenant without satisfying the latter's equity. This is usually achieved by the payment of reasonable compensation. See, *Khew Ah Bah v. Hong Ah Mye* [1971] 2 MLJ 86; *Pembangunan Darjat Sdn Bhd v. Wong Jie Tshung & Ors* [2000] 2 MLJ 212.

[3] What the appellant did here was to destroy the respondent's house by demolishing it in the purported exercise of its statutory power under the Act. But, as was found by the learned judge – with which finding we entirely agree – the respondent was not heard on the matter before his house was demolished. It is a settled principle of public law that a person must be heard before he or she is deprived of his or her property, See, *Cooper v. The Wandsworth Board of Works* [1863] 143 ER 414 at p. 420 where Byles J said: "[A]lthough there are no positive words in a statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature". Since the respondent was deprived of his house in breach of the rule in *Cooper*'s case, the appellant was plainly entitled to be compensated for the loss of his house.

[4] There is another ground – a firmer ground – on which the judgment of the learned judge may be upheld. This is a case where the respondent was deprived of his property otherwise than in accordance with law, namely, the requirement of the law that he should have been given an opportunity of being heard. This is in clear violation of art. 13(1) of the Federal Constitution. And it has been repeatedly held by courts across the Commonwealth that compensation is payable to a person whose constitutionally guaranteed fundamental right, such as the right to life, personal liberty or property is violated. See, *Maharaj v. Attorney-General of Trinidad & Tobago (No. 2)* [1979] AC 385; *Nilabati Bahera v. State of Orissa* [1993] AIR SC 1960; *Oag v. The Queen* [1985] 22 CRR 171; *Fose v. Minister of Safety and Security* [1996] 2 BCLR 232; *Simpson v. Attorney-General* [1994] 3 NZLR 667; *Cullen v. Chief Constable of the Royal Ulster Constabulary (Northern Ireland)* [2003] 1 WLR 1763.

[5] For the reasons already given, we found ourselves in agreement with the judgment of the learned judge. The appeal was accordingly dismissed and the usual orders consequent upon a dismissal were made.